IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE:	.	Case No. 23-12825(MBK)
	.	
	.	Clarkson S. Fisher U.S.
LTL MANAGEMENT LLC,	.	Courthouse
	.	402 East State Street
	.	Trenton, NJ 08608
Debtor.	.	
	.	Tuesday, May 30, 2023
. . . . .	.	11:31 a.m.

TRANSCRIPT OF TELEPHONIC STATUS CONFERENCE AND MOTION HEARING

BEFORE THE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

TELEPHONIC APPEARANCES:

For the Debtor:	Jones Day By: GREGORY M. GORDON, ESQ. 2727 North Harwood Street Suite 500 Dallas, TX 75201
For Ad Hoc Committee of Certain Talc Claimants and Ad Hoc Committee of Creditors:	Brown Rudnick LLP By: JEFFREY L. JONAS, ESQ. DAVID J. MOLTON, ESQ. MICHAEL WINOGRAD, ESQ. 7 Times Square New York, NY 10036
For the Office of the U.S. Trustee:	Office of the U.S. Trustee By: LINDA RICHENDERFER, ESQ. J. Caleb Boggs Federal Building 844 King Street, Suite 2207 Lockbox 35 Wilmington, DE 19801
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Various Talc Personal Injury Claimants:	Watts Guerra LLP By: MIKAL C. WATTS, ESQ. 5726 W. Hausman Road, Suite 119 San Antonio, TX 78249
For Various Talc Claimants:	Maune Raichle Hartley Frency & Mudd, LLC By: CLAYTON L. THOMPSON, ESQ. 150 West 30th Street, Suite 201 New York, NY 10001
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For Ad Hoc Committee of Supporting Counsel:	Paul Hastings, LLP By: KRIS HANSEN, ESQ. 200 Park Avenue New York, NY 10166
For the Talc Claimants Committee:	Massey & Gail LLP By: JONATHAN S. MASSEY, ESQ. The Wharf 1000 Maine Avenue, SW Suite 450 Washington, D.C. 20024

And in that regard, the documents focused on the transaction in which the funding agreement, the 2023 funding agreement was structured both email communications and drafts. The Committee submitted correspondence on May 29th, yesterday, raising issues with respect to Jones Day involvement.

Let me see if, Mr. Gordon, do you wish an opportunity to respond to that correspondence?

MR. GORDON: Thank you, Your Honor. Greg Gordon on behalf of the debtor. I'm sorry that you're not feeling well today, and I appreciate as well the fact that you're even conducting this hearing.

With respect to the letter that came in last night, honestly, I've only had a short period of time to review it. But I think the response to it is rather simple and straightforward, and that is that we don't believe there was a conflict. And so both sides -- you know, as Your Honor probably knows based on what you've seen, both sides began looking at the issues immediately following the January 30 opinion. Counsel for J&J was involved, counsel for LTL was involved, and that was us, Jones Day.

And fundamentally, both sides in taking the look at the issue came to the same conclusions fundamentally about it. And so from our perspective, we don't believe there was a conflict. And accordingly, the arguments that we should have involved conflicts counsel to exclusively handle those issues

we think missed the mark.

Now that's not to say that Mr. DeFilippo wasn't involved. He was. I don't know whether that would make a difference to the Committee or not. I doubt that it would. But, again, fundamentally, our response is that in our view, there was no conflict. Both sides came to the same conclusion. and perhaps in some ways more importantly, the issues Ultimately were rendered moot by the ability of the company and J&J and Holdco to come to agreement on a new set of financing that we believe put the debtor in basically the exact same place it was in before, that its obligation to pay claims was fully covered by the financing in ways that were very similar to if not in some respects, the same as the financing that was in place earlier.

THE COURT: All right. Thank you.

Mr. Winograd or Mr. Jonas, do you want to respond?

MR. JONAS: Yes, Your Honor.

It's Jeff Jonas from Brown Rudnick on behalf of the TCC. I'll be brief, Your Honor. I think between our initial papers and the letter we recently filed, there's not a lot more to say, but I'll just respond to Mr. Gordon's comment and be brief about it.

Your Honor, it's truly an incredibly position that the debtors and Jones Day have now taken that there was no conflict in terminating the first funding agreement by which

Johnson & -- and entering into the second funding agreement by which Johnson & Johnson went from a $61-billion-plus obligation to a zero-dollar obligation.

Today, Your Honor, under funding agreement two, absent a confirmed plan, J&J has zero obligation, zero exposure. Certainly, this was a fantastic deal or arrangement for J&J, not so much for LTL. And to say that there was no conflict and, therefore, no adversity is frankly ridiculous. It's incredible, it's ridiculous, it does not hold water. And, Your Honor, it takes us to the heart of the issue which was if there was adversity at that point in time where the parties allege the first funding agreement was void or voidable, there had to be adversity.

How could it be that J&J went from $61-billion to zero all of which or none of which inures to the benefit of my clients? How could that not be an adverse situation? If it was adverse, as we argued the first go-around, there can't be a privilege, and that's the end of it. I appreciate, Your Honor, obviously I didn't have the benefit of seeing the underlying documents, but I appreciate on its face it was dressed up very nicely for Your Honor. Boy, look at all these lawyers, communications, emails, memos. It must be privileged. It can't be privileged because there was adversity, Your Honor.

And with that, Your Honor, obviously, our letter goes into the various comments that both Mr. Gordon made and that

the Court put on the record that to the extent there ever was adversity or ever was a conflict, it was clear to everybody in LTL1, of course, Jones Day shouldn't be involved. So to now recreate history and the only way they can solve for that is to say, oh, there never was adversity, there never was a conflict, it's incredible, Your Honor. And that's all I'll say at this point.

Thank you. And I do appreciate, notwithstanding you being under the weather, you taking the time to hear us today, Your Honor. Thank you.

THE COURT: Thank you, Mr. Jonas.

All right. Is there any other comments?

(No audible response)

THE COURT: In reviewing the materials in camera and notwithstanding the concern that at some future point, the parties may be adverse with respect to enforceability of either the 2021 or 2023 funding agreements, that potential adversity doesn't vitiate in this Court's view the common law common-interest privilege that upholds the work-product or attorney-client privilege interposed between LTL, J&J, and Holdco.

All of those three entities were targets or are targets of talc-related litigation. They share, in this Court's view, a common legal interest in attempting to have the talc claims addressed through a Chapter 11 with a 524(g) channeling capacity. They share a substantially similar legal

interest in developing a structure of a funding agreement that would be consistent with the Third Circuit's decision dismissing the first Chapter 11 case.

The Court rules that communications in furtherance of developing such legal strategy supporting such objectives (audio interference) bad-faith challenges to LTL's bankruptcy fall within the ambit of their common interest and, thus, the attorney-client work-product privileges would attach.

If there is a breach of fiduciary obligations by the parties or their counsel, that is for an issue to be determined down the road and if it arises, then we can -- the issues can be addressed. But I found no basis to vitiate or terminate the attorney-client privilege as a consequence at this juncture.

Now having said that, the documents submitted included drafts of agreements with attorney notations, changes, suggestions. It includes emails reiterating or reflecting such work product and attorney thought processes. And they are in whole from what I could tell protected with one limited exception and a few that I'll note.

With respect to the PowerPoint, the redactions are proper as far as restricting the release of attorney-client privilege information and work product. The Court reviewed each of the redacted material. I'm going to make one exception. Not that I don't believe it falls within the ambit of the attorney-client and work-product privilege, but the

slide that it's at Page 12 that references considerations regarding filing in New Jersey, because the lack of transparency would give rise to too much rumination and mischief, I am going to direct that that slide be released.

It was intriguing to me to see what considerations there were for filing in New Jersey. I'm sure it was interesting to others. And I just think there will be more mischief served, more mischief undertake and I think transparency warrants releasing that slide. I don't believe there's prejudice to the debtor or J&J in so doing. That's just a limited exception.

I do have questions. The privilege log provided and those that were provided fell in my view within the protections. The log identified certain attachments that obviously I didn't have a chance to see. And I can't rule on what I don't see. So I'm going to give -- it's about nine of them, and I'm going to ask the debtor to provide the Court with those nine attachments so that I can determine whether or not they too fall within the parameters of the privileges. Those are the following numbers: 12, 14, 16, 18, 22, 33, 53, 57, and 62.

If you can provide those to me within 48 hours, I'll take a look at them and determine whether it's consistent with the other rulings or whether they should be released.

Moving on to the --

from the other side.

But that would be our suggestion, Judge, and we would be ready to move -- one of my favorite words, as people who know me know -- with alacrity in terms of, you know, getting papers to Your Honor on this issue, allowing the debtor to do so, and Mr. Hansen on behalf of his committee, should he want to, and Your Honor doing what judges do before a trial, decide what's relevant and not in order to make the trial much more effective, efficient, and streamlined.

That's all I have to say, Judge.

THE COURT: All right. Thank you, Mr. Molton.

Mr. Hansen, do you still have -- your hand is up, I'm not sure --

MR. HANSEN: It is, Your Honor, just very briefly. So, Your Honor, again, Kris Hansen with Paul Hastings on behalf of the Ad Hoc Committee.

Just with respect -- you asked a very direct question, which was what's wrong with a neutral third party doing a de-duping. You didn't get an answer. The answer is there's nothing wrong with a neutral party to do the de-duping. There is no reason why the TCC's experts have to do it. It can be done by a neutral third party.

The second point, in response to you asking what's wrong with this, wasn't nothing. The answer was, well, we didn't put it at issue. Somebody needs to bring it on by

motion.

The reality is that everybody in this case keeps coming up to the podium and talking about how many they have in support and how many they don't. And so clearly people know who are out there and can easily submit that information. So reciprocity is pretty important from our perspective.

The third point I just wanted to make about 2019, just quickly, we all know what the 2019 standards are. If you make a notice of appearance in a case and you act on behalf of others, you have to file a 2019 statement when you are representing a group. That's what the rule says.

I understand what Ms. Richenderfer says, but there have been a lot of lawyers that have been appearing in front of Your Honor that have yet to file 2019 statements, and they certainly do represent more than one claimant. And with respect to the members of the TCC themselves, to the extent that they do represent a multitude of claimants, again, what's wrong with filling all that information into a neutral third party to do the de-dup? No one is giving you an answer on that. There is no prejudice to anybody.

The answer you get is somebody needs to put it at issue. You can't just ask for it when someone asks you to put your claim into the de-dup process.

So when we come back to it, Judge, I think the only fair result with this is that all the claims go in, they all

get de-dup'd, and the lawyers get access to that information and we can move on from there.

And to be honest, Judge, if you want, like, from our perspective, everybody here is a professional, but there's a lot of trust at issue in the case, and that's why we suggested a mutual third party, so then that way nobody has the ability to point at anybody else and say, aha, something bad happened as a result of this, you leaked information, you gave it to somebody else, you didn't do a proper de-dup process, because what we're trying to do is neutralize the parties in issue and just move it to a point where nobody can claim that there's partisanship going on anymore.

THE COURT: All right. Thank you, Mr. Hansen.

Mr. Winograd, last comments?

MR. WINOGRAD: Between the mute and the hand raising, sorry, Your Honor.

The idea of this neutral third party, again, if we even get there, given Mr. Molton's suggestion and whether this is all, in fact, relevant, but again, it's one thing to say we're going to turn over information to a third party, it's another thing to say the issue -- the only information at issue is information that the other side and its FA's already have access to, we should be able to verify that.

If a mistake is made by a third party doing the de-duplication process or who is not running it in a certain way,